

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	98-CR-1101(ILG)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
FELIX SATER,	:	Wednesday, April 17, 2019
	:	10:30 a.m.
Defendant.	:	
	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR MOTION  
BEFORE THE HONORABLE I. LEO GLASSER  
UNITED STATES SENIOR DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:	RICHARD DONOGHUE, ESQ. United States Attorney Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201
BY:	TEMIDAYO AGANGA-WILLIAMS, ESQ. Assistant United States Attorney
For Felix Sater	MOSES & SINGER 405 Lexington Avenue, 12th Floor New York, New York 10174
	BY: ROBERT S. WOLF, ESQ. ROBERT BARNES MCFARLANE, ESQ.
For First Look Media:	EMERY, CELLI, BRINCKERHOFF & ABADY 600 Fifth Avenue, 10th Floor New York, New York 10020
	BY: ANDREW CELLI, ESQ. BRIAN BRALOW, ESQ.

1 (In open court.)

2 (Judge I. LEO GLASSER enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 Criminal Cause for Motion, United States versus  
5 Felix Sater.

6 Counsel, please come forward and state your  
7 appearances.

8 MR. AGANGA-WILLIAMS: For the Government,  
9 Your Honor, Temidayo Aganga-Williams.

10 THE COURT: Good morning.

11 MR. WOLF: Good morning, Your Honor.

12 Robert Wolf, representing Felix Sater. Also to my  
13 left, Your Honor, Robert McFarlane, an associate from my  
14 office.

15 MR. McFARLANE: Good morning.

16 THE COURT: Good morning.

17 MR. CELLI: Your Honor, I'm Andrew Celli. I am here  
18 for First Look Media. With me is my colleague, David Bralow,  
19 who will be arguing today.

20 MR. BRALOW: Your Honor, my name is David Bralow.  
21 I'm an attorney at First Look Media. Thank you.

22 THE COURT: You are the person whose submission was  
23 entered.

24 MR. BRALOW: Yes.

25 THE COURT: All right.

1 Good morning.

2 ALL: Good morning.

3 THE COURT: I think it is appropriate for me to hear  
4 the movant first.

5 MR. BRALOW: All right, Your Honor.

6 Your Honor, I know and I well appreciate that  
7 motions for leave to intervene and motions to unseal are  
8 somewhat common before you, and it would be not judicious or  
9 in the interest of time to actually discuss the state of the  
10 First Amendment law of access. I suspect that you are quite  
11 familiar with it.

12 I also recognize that the Court has grappled with  
13 this question with respect to the interplay between the PSR  
14 and the sentencing memoranda, as well as the 5K letter,  
15 throughout the term of this particular matter as it relates to  
16 this Information.

17 I'll be very clear that we have never wanted and we  
18 do not ask for the PSR. What we do ask, though, in this  
19 circumstance, is at least the sentencing memoranda and the 5K  
20 letter, and some of the documents that have been sealed. And  
21 the reason why we come forward this time, and perhaps the next  
22 time, or sometime in the future, is that we believe that  
23 The First Amendment right of access does attach to these  
24 particular papers, and that each time that the Court has an  
25 obligation, respectfully, to examine whether the compelling

1 interests that have called for the sealing remain. Now one of  
2 the changed circumstances that make us go forward at this  
3 moment, and I think they are somewhat obvious.

4           The first is that Mr. Sater seems to be the one  
5 controlling the narrative of what it is that he has done and  
6 what he has not done with respect to his cooperation. So he,  
7 in dribs and drabs, discusses his heroic -- his heroism, and  
8 yet we really don't have a full picture or understanding about  
9 what was the cooperation, and what was the effort that allowed  
10 Mr. Sater to have the type of sentencing that he actually  
11 ultimately received.

12           We also know that this Court and other courts have,  
13 by dribs and drabs, released certain information. Last week  
14 we learned that Mr. Sater had received -- you know,  
15 Mr. Sater -- we've looked at the -- the Court unsealed three  
16 documents. Last week the Court unsealed three documents that  
17 talked about Mr. Sater wearing a wire, going, traveling for  
18 the benefit of the FBI, and what we would be interested in  
19 knowing is exactly what is the Government's interest at this  
20 point in keeping his cooperation -- continuing to seal off his  
21 cooperation.

22           Because, in fact, we still maintain, and always have  
23 maintained, that it's going to be the Government's burden to  
24 demonstrate a compelling -- or Mr. Sater's burden to  
25 demonstrate a compelling interest, and to demonstrate that the

1 sealing is no broader than necessary and that it would be  
2 effective.

3           We also know today that Mr. Sater and his  
4 involvement with the Trump organization, his likely mention or  
5 reference in the Mueller report is -- creates a significant  
6 public interest in what it is that this individual has done  
7 and not done historically. And it really is this concept that  
8 we need to be able to protect the historical record with  
9 respect to Mr. Sater, because at some point we will be, you  
10 know, he -- there will be people that will be interested in  
11 exactly this particular conduct that Mr. Sater did and,  
12 frankly, the conduct of the Government in relationship to  
13 Mr. Sater.

14           I mean, it should not be ignored or it comes as an  
15 interesting coincidence that several of the U.S. Attorneys  
16 that were working with Mr. Sater during the 1990s and into the  
17 2000s, are some of the same attorneys that are working or had  
18 worked with Mr. Mueller in the special investigation with  
19 respect to the President.

20           We know that Mr. Sater has testified before Congress  
21 and is likely to testify before Congress, and we also know  
22 that Mr. Sater seems to be quite willing to disclose what he  
23 wants to disclose at one time or another.

24           So I maintain, and first look maintains, that it is  
25 clear that The First Amendment right of access attaches to

1 sentencing reports.

2 THE COURT: It is not an absolute right.

3 MR. BRALOW: But it is not an absolute right and it  
4 is clear that the Court has the obligation to determine  
5 whether there is a compelling interest, and the Court has met  
6 this obligation repeatedly. But maybe it is now time to  
7 disclose this particular information, or at least to put the  
8 Government through taking a look at the various sentencing  
9 memoranda and the sentencing report again to see what, in  
10 fact, is particularly compelling.

11 The Government, I suspect, will bring out the  
12 Charmer's factors one more time, and that's fine. Or  
13 Mr. Sater will. But we have to look at what were those  
14 interests in Charmer that are perhaps not particularly likely  
15 or important -- or are not -- are not really subject to being  
16 protected at this point. For the safety of the defendant, for  
17 instance, is one of the first Charmer's factors.

18 Well, Mr. Sater is well willing to discuss his  
19 activity and usually when you are talking about Charmer in  
20 this circumstance, the cooperation seems to be ongoing.

21 The privacy of third-parties. We can't really  
22 discuss or disclose -- take any type of crack at trying to  
23 decide what the privacy of third-parties are, but at least the  
24 public should have a succinct statement as to what that  
25 privacy interest is, rather than just a generalized statement

1 of the Charmer's factors.

2 Protecting the ability of the Government to provide  
3 other cooperators would be one of the factors that is most  
4 often discussed in Charmer. I am having trouble, as a  
5 practical matter, when this cooperator -- well, it just seems,  
6 I will put it this way, Mr. Sater is *sui generis*. He seems to  
7 be a person that is acting on his own behalf and creating his  
8 own story. It doesn't seem that, in effect, that Mr. Sater --  
9 the disclosure of Mr. Sater's information that would be found  
10 not in the PSR, but in the 5K letter, and the sentencing  
11 memoranda, would be implicated by or would implicate somehow a  
12 chilling effect on these particular cooperators at this time.

13 Finally, there is that issue with respect to  
14 protecting information that would be held in confidence, that  
15 was provided in confidence. Again, looking at a blank piece  
16 of paper, I can't really address that, but what I would ask  
17 the Court to do, and I ask the Government to do, is to take a  
18 look at what was provided in that particular sentencing  
19 memoranda and the 5K letter, and determine whether or not the  
20 public's right of access at this point to understand what and  
21 how the justice was provided to Mr. Sater was meted out.

22 I think that you have heard the arguments before,  
23 but I think at this time and at this moment, it is time for a  
24 new look with respect to these documents, and it's really time  
25 to hear the Government assert what interests still remain and

1 why these particular documents should be sealed.

2 Thank you, Your Honor.

3 THE COURT: Let me just tell you that I do not  
4 intend to proceed with this hearing regarding whether the  
5 information in the documents that have been requested to be  
6 unsealed does or does not yield some overriding compelling  
7 interest. I am bound by In Re: Herald and by Haller to give  
8 the proponents for maintaining the sealing of these documents  
9 an opportunity to carry the burden of proof, which is theirs,  
10 that continued sealing is necessary.

11 To do that, a review of those documents would be  
12 necessary and to review them in open court would, obviously,  
13 defeat the entire purpose of whether documents should or  
14 should not be sealed. So I will not go into that question  
15 here in open court. I will do that in camera.

16 There will be a record of those proceedings. I do  
17 not know how long they will take. I doubt that they will take  
18 very long. And to the extent that the findings are made,  
19 which are deemed to be unsatisfactory, or make proponents of  
20 unsealing unhappy, I think Herald and Haller indicate that an  
21 appellate process is appropriate. That procedure has been  
22 affirmed by the Second Circuit.

23 Mr. Bralow, I have been through this more than once.  
24 And what is interesting about it, there are a number of things  
25 that are interesting about it. I am sorely tempted to conduct



1 what might loosely be described as a seminar in sealing and  
2 the underlying objectives of this entire process, particularly  
3 statements which are made in the leading cases which are cited  
4 all the time, Lugosch and Amodeo and Alcantara about how  
5 historically all of this was done.

6           Going back into history, if that would mean going  
7 back to 17th and 18th century judicial proceedings in England,  
8 there was not access to trials at all, let alone documents.  
9 Even in this country, the question as to whether the access,  
10 the right of access pertained to documents, historically it  
11 pertained to the trial. And so you had a Supreme Court case  
12 decide whether access to suppression hearings permitted by  
13 The First Amendment. Had the Supreme Court then had to decide  
14 whether sentencing proceedings require access pursuant to  
15 The First Amendment.

16           I think in Gannett versus DePasquale, Judge  
17 Rehnquist said he does not under why The First Amendment is  
18 even applicable here, why it has any application to this whole  
19 purpose.

20           We can go into that for a long time. We can  
21 question exactly what is it besides knowing that Sater  
22 cooperated -- and by the way, Sater is not driving the  
23 narrative for this Court. This Court is making its  
24 determination based upon what the law would require it to  
25 make, and it is interesting to observe what it is that this is

1 really all about.

2 In 1998 I took a plea of guilty to Sater to a  
3 racketeering count which was the same, precise same count, for  
4 which 19 other defendants were indicted. It was part of that  
5 whole pump and dump operation which organized crime was  
6 intimately involved. I believe I am right in remembering that  
7 I sentenced every one of those 19 defendants eventually over a  
8 period of time.

9 And 10 or 11 years went by after that plea was taken  
10 and the letters that you say I unsettled, or three that were  
11 requested by a Ms. Collins, who is now someplace in Romania, I  
12 think, were letters which asked for an adjournment over 10 or  
13 11 years, if you looked at the docket sheet. There are  
14 letters requesting an adjournment. The defendant namely,  
15 Felix Sater, was a cooperator.

16 And then the time came in 2010, I think, or 2009,  
17 when Sater was sentenced. That was the end of the matter.  
18 Nothing else was of any great significance. Just another  
19 defendant pled guilty to a crime, was sentenced.

20 And then an action is commenced in the Southern  
21 District of New York, and everything that has happened since  
22 had nothing to do with the crime for which he was sentenced,  
23 the RICO offense. Everything that has happened since 2010, I  
24 guess, is when the attorneys who then represented Sater came  
25 dashing into my court requesting a preliminary injunction,

1 civil action was filed in the Southern District of New York  
2 and attached to the complaint was a Pre-Sentence Report and  
3 proffer agreements and a cooperation agreement.

4 You know all about that, don't you, Mr. Bralow?

5 MR. BRALOW: Yes, sir.

6 THE COURT: So nothing to do with the crime for  
7 which Mr. Sater was sentenced and to which he pleaded guilty.  
8 Had only to do with Mr. Sater's involvement in real estate  
9 transactions. Had nothing to do with that crime to which he  
10 pleaded guilty back in 1998.

11 And now there is renewed interest. And it is  
12 interesting. Looking at your brief, or memorandum in support  
13 of your application, what is interesting is on page 3,  
14 Mr. Sater is scheduled to appear before the U.S. House  
15 Intelligence and Judiciary Committee. The Court knows that  
16 the intense light of scrutiny shines on Mr. Sater's  
17 relationship with Russian oligarchs and organized crime.

18 You know all that. You knew what his relationship  
19 was to Russian oligarchs. I think all of that has been  
20 revealed many times in the past. That was part of his  
21 cooperation during that 10 or 11 years.

22 But then you go on: His association with President  
23 Donald Trump, his involvement in meetings concerning building  
24 a Trump tower. That is what has really fueled all this sudden  
25 interest in Felix Sater, because he is involved with Trump.

1 And so in order to have some understanding of what his  
2 involvement with Trump was, the need is to unsettle documents  
3 which were part of a sentence back in 2009.

4 I do not want to go on and read some more  
5 references, in your very good, very able memorandum continuing  
6 to talk about how important all this is for the understanding  
7 of his relationship with Trump. His relationship with Trump,  
8 there is not a mention of Trump, as I remember it, not in 1998  
9 when he pleaded guilty. I don't think he even knew who Trump  
10 was then, nor was there any mention of Trump in a Pre-Sentence  
11 Report that I can remember, or in any other documents relating  
12 to sentence involving or relating to Trump that I can  
13 remember.

14 But there is this renewed interest in the documents  
15 which had to do with his sentence, whether his cooperation  
16 warranted the sentence which the Court imposed. Did the Court  
17 exercise, discharge its judicial responsibility to the  
18 defendant and to the community? Was the sentence appropriate  
19 given all the circumstances of his cooperation and the rest of  
20 it. That is one question which has been fueling a lot of  
21 this.

22 I do not know whether you saw the two recent  
23 documents that were recorded.

24 MR. BRALOW: I did, Your Honor. I do not endorse  
25 them.

1           THE COURT: The question with respect to why wasn't  
2       restitution ordered in connection with Sater; it was not  
3       ordered in connection with the 19 defendants who were part of  
4       that crime, simply because the statute provided that  
5       restitution is not appropriate where the amount is impossible  
6       to ascertain harm to any particular defendant or victim is  
7       hard to entertain. An effort to do all that would  
8       unnecessarily and needlessly complicate and prolong the  
9       judicial process.

10           And the Government made that application. Said to  
11       me, restitution is not appropriate because of all those  
12       factors and the statute says it.

13           So what is it that you want to know that you do not  
14       already know that may have some implication for the Trump  
15       connection which Sater?

16           The point of the matter is, without laboring it any  
17       further, with respect to whether there is anything in these  
18       documents, which I am not aware of now, that the Government  
19       can point out would justify some compelling interest, some  
20       overriding social value, I will conduct a hearing with the  
21       Government and with the defendant for the purpose of making  
22       that determination. And to the extent that your position is  
23       correct, that there is not any justification for continuing  
24       these documents to be sealed, I will unseal them. But to the  
25       extent that I can be satisfied that there is an overriding

1 social interest and compelling interest, I will keep it  
2 settled. I will keep it sealed.

3 I do not know that now. It is correct that Sater  
4 has maybe a factor for me to consider. He has testified or he  
5 has appeared on public television. He has appeared with who  
6 was it you told me? Chris Hayes and with --

7 MR. BRALOW: Quite a few.

8 THE COURT: -- other people, yes.

9 An interesting question, I suppose, might be argued  
10 as to whether he has waived all of these other considerations.  
11 I do not know at this stage whether he has or he has not.

12 But I can assure you, Mr. Bralow, that if the law  
13 requires me to unseal these documents -- you know there seems  
14 to be some underlying sense that courts want to keep things  
15 secret, that we want to hide things from the public, that the  
16 public has a significant interest in knowing what did he do  
17 over the 10 or 11 years.

18 He cooperated. And you know what he did over the  
19 10, 11 years, because you told me that you know. He provided  
20 the telephone number of Osama bin Laden. He has done an awful  
21 lot of very interesting and dangerous things. What else does  
22 the public have to know that would affect these House of  
23 Representatives hearings and Mr. Trump?

24 I do not know. There may be other things.

25 In your memorandum, what I am really saying,

1 Mr. Bralow, I am looking at page 2 of your memorandum:

2 Mr. Sater is protecting safety. Mr. Sater and his  
3 family preventing publication that may serve as a disincentive  
4 for other confidential informants, preserving the  
5 confidentiality of the Pre-Sentence Report have diminished.

6 Have diminished. They have not disappeared. I do  
7 not know whether there is still some kernel left that I do not  
8 know about that the Government can convince me, requires  
9 continued sealing.

10 I am sorely tempted to go into it. Some day maybe  
11 we can sit down and have a cup of coffee and we will talk  
12 about sealing and the judicial function. But there was a  
13 professor at the University of Texas Law School. His name was  
14 Bernie Ward. He was a great admirer of the Federal judiciary.  
15 He never referred to Federal judges as Federal judges. He  
16 always referred to them as judges of the Third Article.

17 And in a memorial that he delivered of a wonderful  
18 judge of the Fourth Circuit who had died, a judge by the name  
19 of Braxton Craven, I go back to this from time to time because  
20 it just renews a sense of what it is I am all about.

21 Professor Ward talks about an event in 1802 in the  
22 House of Representatives when there was an effort to repeal  
23 the Judiciary Act of 1801. A representative of the State of  
24 Delaware, by the name of Bayard, rose and argued against the  
25 repeal of the Judiciary Act of 1801 and why, he asked, did the

1 gentleman fear the judges? The gentlemen who were advocating  
2 for the repeal of the Judiciary Act of 1801.

3 Why, he asked -- this was Representative Bayard --  
4 did the gentleman fear the judges? The judges are not a  
5 privileged order. They have no shelter but their innocence.

6 Isn't that a marvelous line? They have no shelter  
7 but their innocence, and I can go on with some other stirring  
8 things that Professor Ward said at that point.

9 But underlying that, one gets a sense that really  
10 there is a notion that we are really not all that innocent;  
11 that we have to be continually examined and tested. And that  
12 is appropriate. Certainly appropriate. But there should not  
13 be a presumption that we are not innocent.

14 Mr. Bralow, it has been a pleasure to see you. And  
15 I have not asked the Government or Mr. Wolf to say anything  
16 because what they would probably say here is all the things  
17 you said that they have been saying in the past, whether those  
18 are what they are going to continue to tell me, I do not know.  
19 Whether there is something else that they have, or the  
20 Government knows with respect to Government investigations, or  
21 whatever, I do not know. I will give them an opportunity to  
22 do it, but to do it in open court, which I think would defeat  
23 the whole purpose of sealing or unsealing.

24 A lot of questions which you have not addressed in  
25 your memorandum, there was no appropriate need for you to do



1 it. A lot of interesting questions as to whether 5K1 letters  
2 have been -- there is experience in logic. Historically how  
3 far back the 5K letters go in history, to talk about  
4 historically. They are judicial documents, it is true, but  
5 the 5K1 letters do more than what the Pre-Sentence Report  
6 says. They provide more than the social history, background  
7 of the defendant, or details about his cooperation. I have  
8 not looked at them in a long time.

9 I think I had better pay attention to Sir Francis  
10 Bacon. He said an over speaking judge is no well-tuned symbol  
11 and end the proceedings here.

12 I thank you very much.

13 Give some thought to some of the things I have been  
14 saying, Mr. Bralow.

15 MR. BRALOW: I certainly, Your Honor.

16 THE COURT: The interest now, which had nothing to  
17 do, nothing to do with the criminal prosecution going back to  
18 1998. Not a thing.

19 And to the extent that there is not or there is some  
20 interest in Sater and Trump, it did not happen here. It  
21 happened in the Southern District with respect to that action  
22 that was brought and things that were attached to that  
23 complaint.

24 And I think -- I do not know whether the record  
25 there is still sealed. I am not sure. It has gone through a

1 couple of judges.

2 MR. BRALOW: Yes.

3 THE COURT: I think it was Judge Buchwald initially  
4 and then Judge Engelmayer. I think some other judge in the  
5 Southern District is dealing with that case now. I do not  
6 know whether that record is sealed, is it?

7 MR. AGANGA-WILLIAMS: Your Honor, there are portions  
8 of it that are sealed that are sealed by virtue of  
9 Judge Cogan's orders. That case has since been settled, the  
10 2010 case. But there were -- and primarily because of the  
11 Pre-Sentence Report, those documents or the portions of those  
12 documents that contain references to the Pre-Sentence Report  
13 as indicated by Judge Cogan, affirmed by the Second Circuit,  
14 Judge Chen, again here in 2017, again affirmed by the Second  
15 Circuit. That is what remains sealed as indicated.

16 THE COURT: Well, another interesting question is  
17 the law of the case.

18 MR. BRALOW: Your Honor, just a procedural issue, if  
19 I may.

20 THE COURT: Yes, please.

21 MR. BRALOW: If it would be helpful, I suggest maybe  
22 it would be, that I participate in some way in the hearing,  
23 not for me to be involved in the -- perhaps I would like the  
24 Court to consider how I can provide at least argument with  
25 respect to what should or should not be continued to be sealed

1 at some subsequent time when you have the hearing,  
2 understanding the nature of why the Court wants to have it  
3 sealed.

4 THE COURT: I think you have made your argument as  
5 effectively as you could possibly make it in your memorandum.  
6 I do not know what else you can add to it.

7 MR. BRALOW: Okay.

8 THE COURT: Thank you very much. I appreciate your  
9 invitation, but as of now, I will reject it.

10 MR. BRALOW: Okay. Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 Have a good day and enjoy the rest of it.

13 ALL: Thank you, Your Honor.

14 THE COURT: Now, with respect to the Government and  
15 Mr. Wolf, let's set a time. I think we may need an entire  
16 afternoon, if not more, to review these documents and make  
17 whatever it is you have to make to try to convince me that  
18 they should remain to be settled.

19 I will make the appropriate findings. If there is  
20 an order to maintain the documents sealed -- I keep saying  
21 settled, I mean sealed -- and to the extent that I make a  
22 determination that there is no justification for them, that  
23 would be the end of that. I do not think there is anything  
24 more to add.

25 So why don't you and Mr. Kessler, you being the

1 Government and you, Mr. Wolf, fix a time that is appropriate  
2 for you and for me, set aside an entire afternoon, at the very  
3 least, to consider. There are not too many documents. Most  
4 of the documents, I think, are without any problem and will  
5 probably be unsealed, at least a quick look through at  
6 Mr. Bralow's request.

7 There are significant documents otherwise, which  
8 Mr. Bralow has been talking about, we will have to examine  
9 those and you will have to tell me what it is that I do not  
10 know now, if anything, okay?

11 Thank you.

12

13 (Matter concluded.)

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